

BEFORE THE FLORIDA JUDICIAL QUALIFICATIONS COMMISSION

INQUIRY CONCERNING A JUDGE, NO. 01-244
(Judge Charles W. Cope)

Case No. SC01-2670

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SPECIAL COUNSEL'S RESPONSE TO MOTION FOR PROTECTIVE**ORDER REGARDING DEPOSITION OF WILLIAM DEARBORN**

The Special Counsel hereby responds to Judge Cope's Motion for Protective Order served on June 10, 2002, and states:

1. Judge Cope seeks to prevent the deposition of Assistant State Attorney William Dearborn, set for Monday, June 17, 2002, in Naples, Florida.

2. The Special Counsel intends to depose Mr. Dearborn solely regarding the videotape of Judge Cope's refusal to take a breathalyzer examination following his arrest in Naples for D.U.I. in 1996. The tape is listed as an Exhibit on the pretrial statement filed by the Special Counsel on March 12, 2002.

3. While this tape may not be directly relevant to the Special Counsel's case-in-chief, it is expected to be relevant in rebuttal. The Special Counsel intends to offer the videotape to respond to expected testimony by Judge Cope regarding his character, which is relevant to the issue of the appropriate discipline to recommend in this case. The Special Counsel proffers that on the videotape, Judge Cope is especially rude, disrespectful, and obstinate with two police officers asking him to take a breathalyzer exam. For example, Judge Cope refuses to acknowledge that he understands his legal rights, clearly explained by the police officers.

4. This aspect of the encounter makes the videotape all the more relevant to Judge Cope's character, because he acted in a similar manner with the Carmel police officers when they attempted to ascertain whether he understood his *Miranda* warning, as seen on the videotape of his booking (which will be offered into evidence). In deposition, Judge Cope testified that had he not been intoxicated during this booking, he would have been even more aggressive with these officers. (Cope depo. vol. II at 508-09.)

5. Mr. Dearborn is not expected to testify about the arrest itself, and the Special Counsel has no intention of trying a six-year-old D.U.I. case. Rather, he is expected to lay the foundation for the entry of the videotape into evidence. Specifically, he is expected to testify that he shows the videotape of Judge Cope when training assistant state attorneys regarding the handling of a D.U.I. suspect who is highly argumentative, disrespectful of authority, and actively resists breathalyzer and blood alcohol tests.

6. Moreover, any financial or time burden resulting from this deposition will be minimal because (1) the deposition should last around fifteen minutes, and (2) appearances can be made by telephone.

WHEREFORE, the Motion for Protective Order should be denied.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by facsimile and regular U.S. mail to: **Robert W. Merkle, Jr., Esq.**, Co-Counsel for Respondent, 5510 W. La Salle Street, #300, Tampa, Florida 33607-1713; **Judge James R. Jorgenson**, Chair of the Judicial Qualifications Commission Hearing Panel, 3rd District Court of Appeal, 2001 S.W. 117th Ave., Miami, Florida 33175-1716; **John Beranek, Esq.**, Counsel to the Hearing Panel of the Judicial Qualifications Commission, P.O. Box 391, Tallahassee, Florida 32301; **Brooke S. Kennerly**, Executive Director of the Florida Judicial Qualifications Commission, 1110 Thomasville Road, Tallahassee, Florida 32303; **Thomas C. MacDonald**,

Jr., Esq., General Counsel to the Investigative Panel of the Judicial Qualifications Commission, 100 North Tampa Street, Suite 2100, Tampa, Florida 33602 this 11th day of June, 2002.

By:
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